



County of Los Angeles CHIEF EXECUTIVE OFFICE

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Chief Executive Officer

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Third District

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MICHAEL D. ANTONOVICH
Fifth District

February 12, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

APPROVAL OF MEMBERSHIP IN THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY SUBJECT TO THE SATISFACTION OF CERTAIN CONDITIONS (ALL DISTRICTS) (3 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

Instruct the Chief Executive Officer and the Treasurer and Tax Collector to work with the California Municipal Finance Authority (CMFA) to reach an agreement regarding the County temporarily joining the CMFA to assist with the issuance of tax-exempt bonds for solid waste management projects that are "green" or enhance public safety, subject to certain conditions laid out in this report, and report back within 30 days.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The California Municipal Finance Authority is a joint powers authority comprised of approximately 12 counties, 36 cities and one special district in the State of California. Recently, this office and the office of the Treasurer and Tax collector (Treasurer) were contacted by CMFA regarding three potential tax-exempt bond financings involving solid waste management projects within the State.

The prospective borrowers in these financings are Allied Waste North America (Allied), Waste Management Inc. (WMI), and Republic Services, Inc. (RSI). In each case, CMFA proposes to issue the bonds on behalf of these private corporations. Total proceeds from the sale of the bonds over three years are estimated at \$528 million and are intended to finance capital improvement projects at 72 collection, transfer and landfill facilities throughout California. Of the 72 projects, 16 are located within Los Angeles County, but only four of the 16 are located in unincorporated areas of the County.

In connection with its proposed issuance of bonds, CMFA has requested that the County of Los Angeles (1) become a member of CMFA, (2) hold public hearings required under the Internal Revenue Code as a condition precedent to each issuance of tax-exempt bonds, and (3) adopt a Resolution of the Board of Supervisors approving the issuance of tax-exempt bonds by CMFA for each borrower. Under California Law, CMFA cannot issue bonds to finance projects within unincorporated Los Angeles County unless the County becomes a member of CMFA.

CMFA has stated that the projects proposed to be financed within Los Angeles County will provide the following public benefits; improved air quality, groundwater protection, improved energy efficiency, renewable energy generation, and improved highway safety. In addition, CMFA has stated that the public subsidy implicit in tax-exempt financing will mitigate increases in trash removal rates, and maintain or increase local employment.

We therefore recommend that your Board authorize the County to become a member of CMFA upon satisfaction of the following conditions:

1. Consistent with existing policy, the County will only hold a public hearing or approve the issuance of bonds for a project located within an incorporated city if the project and/or bonds have been approved by the respective City Council, Mayor, City Manager or City Council Member with specific jurisdiction over the project area.
2. Credit enhancement acceptable in form and substance to the Treasurer (municipal bond insurance or a letter of credit) must be obtained and maintained for the life of the bonds attributable to each of the three borrowers.
3. All opinions of bond counsel (including a 10b-5 opinion with respect to the accuracy and completeness of disclosures made to bondholders under the Securities Exchange Act of 1934) must be addressed to your Board at the time the bonds are issued.
4. The County will withdraw its membership from the CMFA following the final issuance of bonds for all three borrowers (estimated three year time frame).

The foregoing conditions will help protect the County while allowing your Board broad discretion over the type and quality of borrowers and programs that should be supported. As the County will have very limited control over future CMFA projects, we believe that withdrawing from CMFA at the earliest opportunity is in the County's best interest.

If we reach agreement with CMFA on the satisfaction of each of the above conditions, we will return to your Board with a Resolution authorizing County membership in CMFA.

At that time we will also recommend that your Board adopt separate Resolutions approving the three tax-exempt financings being proposed by CMFA on behalf of Allied, WMI, and RSI.

Implementation of Strategic Plan Goals

This action supports the County's Strategic Plan Goal of Organizational Effectiveness through collaborative actions between the County and other governmental jurisdictions.

FISCAL IMPACT/FINANCING

None to the County. There is no cost associated with membership in the CMFA and repayment of the bonds will be the obligation of the borrowers (Allied, WMI, and RSI). Although there is no immediate fiscal impact to the County, there is a potential risk to the County for this type of transaction should any borrower default on its bond payments. In this circumstance, while the bondholders would have no direct recourse to the County, and the County would have no financial liability to CMFA, a lawsuit could be brought by a bondholder against all the parties involved with the bond transaction, including the County, alleging securities fraud under Section 10b of the Securities Exchange Act of 1934 (including Rule 10b-5). If the court found that issuance of the bonds constituted a "fraud on the market" or that the sale of securities was based on false or misleading statements, the county could be held liable for damages along with the other defendants. To mitigate against this possibility, my office is recommending that credit enhancement be required for the borrowers and that bond counsel render a Rule 10b-5 opinion directly to the County.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Pursuant to Section 147(f) of the Internal Revenue Code of 1986 (the Code), tax-exempt private activity bonds, such as those being proposed by CMFA, must be approved by an elected official or board having jurisdiction over the area in which the project being financed is located. The Board of Supervisors has the authority to approve the issuance of bonds for any project within Los Angeles County. Prior to such approval, the Tax Equity and Fiscal Responsibility Act (TEFRA) provisions of the Code require that a public hearing be held regarding the facilities or project proposed to be financed with the proceeds of tax-exempt bonds.

When considering requests for the public financing of private facilities, the County's longstanding practice has been to defer any decision on financing a project located within an incorporated city to the respective City Council. The County has taken the view that the incorporated cities are in the best position to evaluate the public benefit of projects located within their jurisdictions. For those projects located within unincorporated Los Angeles County, the Treasurer has developed specific procedures to determine if such financings should be recommended to your Board for approval.

First, a determination of public benefit must be made through consultation with affected local agencies and County Departments. Second, the Treasurer must confirm that there will be no immediate costs to the County as a result of the financing. Third, the borrower must obtain a form of credit enhancement to help protect the County against any liability as a result of default by the borrower in the payment of debt service. The requirement to obtain credit enhancement may be satisfied either through municipal bond insurance or a bank-issued letter of credit.

The three financings proposed by CMFA include projects in unincorporated Los Angeles County as well as within seven incorporated cities (Los Angeles, Azusa, Compton, Long Beach, Palmdale, Avalon and Gardena) in the County. The County is being asked to join CMFA and approve the issuance of tax-exempt private activity bonds for the four projects located in unincorporated County areas. CMFA is also asking that the County approve the issuance of tax-exempt private activity bonds for the 12 projects located within incorporated cities. My office has determined that there will be no cost to the County to join CMFA and that repayment of the bonds will be the respective obligation of each borrower (Allied, WMI, and RSI). The ability of these borrowers to obtain and maintain credit enhancement will be determined in large part by their respective creditworthiness.

It should be noted that accommodating CMFA and complying with their request to facilitate the issuance of tax-exempt bonds on behalf of Allied, WMI and RSI represents a major policy shift in the County's handling of conduit financings. Since 1997, we have held TEFRA hearings and your Board has approved 16 financings that included the following purposes: the Los Angeles County Museum of Art, hospitals, health clinics, schools, retirement/assisted living/nursing homes, a camp for disabled and chronically ill children, a service center for disadvantaged families, and a convalescent home. All of these transactions involved non-profit corporations with 501(c)3 charitable status and provided clear and demonstrable public benefit. However, solid waste disposal companies such as Allied, WMI and RSI, are for-profit corporations that present somewhat less compelling public benefit arguments. The only tax-exempt bonds approved by your Board for for-profit borrowers were to finance an assisted living project for Park Marino Convalescent Center, Inc. in 1997, and solid waste disposal facilities for RSI in 2000. By assisting RSI with its bond issuance in 2000, the County was able to collect a total of \$766,730 in past due fees and another \$500,000 in penalties. However, we are willing to recommend temporary membership in CMFA for the solid waste projects because of the public benefits related to these "green" or public safety projects.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Not applicable.

CONCLUSION

Upon adoption, please return two certified copies of the Minute Order and the adopted, stamped Board Letter to the CEO for further processing.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:ES
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c: Treasurer and Tax Collector
County Counsel
Auditor Controller